

REMARKS

This communication responds to the non-final Office Action mailed July 12, 2005.

In the present communication, applicant has amended claims 2-3, 5-9, 11-15, 17-18, 20-28, and 36-44. No new subject matter has been added to the claims.

Claims 1, 4, 16, 19, 29-34, and 35 have been canceled. Therefore, claims 2-3, 5-15, 17-18, 20-28, and 36-44 are pending.

Amendment of or cancellation of the claims has been done to help expedite the prosecution of the invention. Applicant reserves the right to pursue the original claims in this or a continuation application. Incorporation of the subject matter of certain independent claims, i.e. claim 1 in to claim 5, should not be construed as limiting and all equivalents of the original unamended independent claim are incorporated in to the subsequently amended claim.

The §§ 112, second paragraph and 103(a) rejections of the claims are respectfully traversed in view of the above amendments because the cited references, alone, or in combination, do not disclose or suggest a method for manufacturing a pie filled with frozen fruit that includes “adding individually quickly frozen (“IQF”) fruit into said pie shell; [and] depositing a suspension over said IQF fruit in said pie shell,” as required by the independent claims. In addition, the cited references fail to disclose a suspension having “a range of about 38% to about 88% liquid sweetener, a range of about 5% to about 55% dry sweetener, a range of about 4% to about 15% food starch; and a range of about 0.01% to about 5.0% food gum,” as required by at least the independent claims.

Rejection of Claims 1 through 44 under 35 U.S.C. § 112, second paragraph

Claims 1 through 44 were rejected under 35 U.S.C. 112, second paragraph. Applicant respectfully traverses the § 112 rejections. However, in order to advance prosecution, claims 2-3, 5-9, 11-15, 17-18, 20-28, and 36-44 are amended.

More particularly, independent claims 5, 20, and 39 have been amended to particularly point out and distinctly claim “a pie filled with frozen fruit.” Corresponding dependent claims have been amended to particularly point out and distinctly claim “a pie filled with frozen fruit,” and have been amended to particularly point out claim dependency. In addition, claims 5, 20,

and 39 have been amended to particularly point out and distinctly claim the composition of the suspension.

Claims 6, 21, and 40 have been amended to particularly point out and distinctly claim “minor ingredients chosen from the group consisting of: processing aids, preservatives, and colors.” Support for the amendment can be found, for example, at paragraph 32 of the application.

Claims 9, 24, and 37 have been amended to particularly point out and distinctly claim the subject matter which applicant regards as the invention by distinctly claiming claim dependency and by correcting certain informalities. Support for the amendment can be found, for example, at paragraph 35 of the application.

Claims 12, 26, and 42 have been amended to particularly point out and distinctly claim the subject matter which applicant regards as the invention and recite “depositing said starch and gum within the IQF fruit prior to baking creates a glossy smooth appearance upon the finished frozen fruit pie filling.” Support for the amendment can be found, for example, at paragraph 23 of the application.

Claims 13, 27, and 43 have been amended to particularly point out and distinctly claim the subject matter which applicant regards as the invention and recite “wherein said suspension exhibits a reduction of viscosity when exposed to heat.” Support for the amendment can be found, for example, at paragraph 22 of the application.

Claims 14, 28, and 44 have been amended to particularly point out and distinctly claim the subject matter which applicant regards as the invention and recite “wherein said suspension exhibits a increase of viscosity when exposed to temperatures above 120 degrees Fahrenheit.” Support for the amendment can be found, for example, at paragraph 22 of the application.

Claim 15 has been amended to particularly point out and distinctly claim the subject matter which applicant regards as the invention and recites “wherein the use of said suspension creates a stable suspension of the suspension and the IQF fruit.” Support for the amendment can be found, for example, at paragraph 19 of the application.

Claim 38 has been amended to particularly point out and distinctly claim the subject matter which applicant regards as the invention and recites “continuing execution of said mixing and adding steps until said dry ingredients are uniformly distributed into said liquid sweetener.” Support for the amendment can be found, for example, at paragraph 32 of the application.

These amendments address the § 112 rejections without adding new matter.

Reconsideration and withdrawal of the § 112 rejections are requested.

Rejection of Claims 29-34 under 35 U.S.C. § 103(a)

Claims 29 through 34 were rejected under 35 U.S.C. 103(a) over U.S. Patent No. 6,562,385 Neumann in view of U.S. Patent No. U.S. Patent No. 4,623,542 Wallin et al. (hereinafter “Wallin”).

Claims 1 through 28 and 35 through 44 were rejected under 35 U.S.C. 103(a) over applicant’s admission of prior art in Newman and Wallin.

Applicant respectfully traverses the rejections of the claims for at least the following reasons.

Applicant submits that the cited references, alone or in combination, fail to disclose or suggest the requirements of the independent claims. The present invention provides a method for manufacturing a pie filled with frozen fruit that includes mixing and forming pie dough into a shell, adding individually quickly frozen (IQF) fruit into the shell, depositing a suspension over the IQF fruit, where the suspension includes 38-88% liquid sweetener, 5-55% dry sweetener, 4-15% food starch, and 0.01% to about 5% food gum, the pie with IQF fruit and suspension added being covered by a top sheet of pie dough.

Another embodiment of the present invention provides a pie filled with frozen fruit that includes a stable suspension of suspension material and IQF fruit. The suspension material includes 38-88% liquid sweetener, 5-55% dry sweetener, 4-15% food starch, and 0.01% to about 5% food gum.

In yet another embodiment of the present invention, a method for suspending frozen fruit in a pie filled with ingredients of various specific gravities is provided. The method includes mixing the suspension ingredients of 38-88% liquid sweetener, 5-55% dry sweetener, 4-15% food starch, and 0.01% to about 5% food gum. The suspension is added to IQF fruit in a pie shell and a top sheet of pie dough is added to the top of the pie shell having IQF fruit and suspension.

Neumann discloses a formula for flavoring toppings at column 7, lines 20-35, “that can be reconstituted for consumption.” See the Abstract. The flavoring toppings are applied to

leavened and unleavened food products. The toppings are reconstituted and closely simulate food products comprising commercially available flavored syrups or flavored toppings. *See the Abstract.*

The flavoring topping in Neumann is not deposited over IQF because *IQF is not disclosed in Neumann. Without IQF fruit, the pie shell can not have IQF added to it.*

Neumann fails to teach, suggest, or provide any motivation or expectation of success to one of ordinary skill in the art to perform the steps of “adding individually quickly frozen (“IQF”) fruit into said pie shell; [and] depositing a suspension over said IQF fruit in said pie shell,” as required by the independent claims.

Furthermore, and as indicated in the Office Action, Neumann fails to disclose a suspension having “a range of about 4% to about 15% food starch; and a range of about 0.01% to about 5% food gum” as required by the independent claims.

Therefore, Neuman fails to disclose the requirements of the independent claims.

Wallin fails to remedy the deficiencies of Neumann.

Wallin teaches a breakfast pastry having an encased flavored filling material. *See the Abstract.* The fruit filling formulation in Wallin is applied to a dough pad “in three rows by spot deposition,” column 14, line 30.

The flavored filling material in Wallin is not deposited over IQF because *IQF is not disclosed in Wallin. Without IQF fruit, the pie shell can not have IQF added to it.*

Wallin fails to teach, suggest, or provide any motivation or expectation of success to one of ordinary skill in the art to perform the steps of “adding individually quickly frozen (“IQF”) fruit into said pie shell; [and] depositing a suspension over said IQF fruit in said pie shell,” as required by the independent claims.

Furthermore, Wallin fails to disclose a suspension having “a range of about 38% to about 88% liquid sweetener” as required by the independent claims.

Therefore, Wallin fails to disclose the requirements of the independent claims.

The disclosed art fails to remedy the deficiencies of Neumann or Wallin because a suspension is not added to IQF fruit. Without the suspension, the top sheet of pie dough cannot be added over the suspension.

The disclosed art fails to teach, suggest, or provide any motivation or expectation of success to one of ordinary skill in the art to perform the steps of “depositing a suspension over

said IQF fruit in said pie shell, [and] applying a top sheet of pie dough over said suspension, IQF fruit and pie shell,” as required by the independent claims.

Therefore, the disclosed art fails to disclose the requirements of the independent claims.

Neumann, Wallin, and the disclosed art, alone or in combination, do not disclose or suggest each element of the independent claims. Specifically, the cited references fail to disclose or suggest a pie filled with frozen fruit manufactured by at least: “adding individually quickly frozen (“IQF”) fruit into said pie shell; [and] depositing a suspension over said IQF fruit in said pie shell,” where the suspension includes “a range of about 38% to about 88% liquid sweetener; a range of about 5% to about 55% dry sweetener; a range of about 4% to about 15% food starch; and a range of about 0.01% to about 5% food gum.” The cited art fails to disclose or suggest a pie filled with frozen fruit manufactured by “depositing a suspension over said IQF fruit in said pie shell, [and] applying a top sheet of pie dough over said suspension, IQF fruit and pie shell.” Therefore, reconsideration and withdrawal of the § 103(a) rejection is respectfully requested.

Moreover, Applicant disagrees with the Office Action’s statement that “It would have been obvious to one skilled in the art to use the suspension of Neumann over the fruit in forming the pie to obtain flavoring and to eliminate the steps of adding the dried ingredients as set forth in the prior art method.” This is because the above-mentioned reasoning is not supported by factual evidence of record. Rather the Office Action uses impermissible hindsight and uses the nature of the problem to be solved in Applicant’s Application as a blueprint for combining the prior art references to arrive at the invention disclosed in the subject application.

Dependent claims 2-3, 6-15, 17-18, 21-28, 36-38 and 40-44 which depend from their respective independent claims 5, 20, and 39 are distinguishable over the prior art for at least the reasons set forth above, and further in view of their additional recitations. Therefore allowance of dependent claims 2-3, 6-15, 17-18, 21-28, 36-38 and 40-44 is requested.

CONCLUSION


This application now stands in allowable form, and reconsideration and allowance are respectfully requested.

No fees are due in connection with this filing. However, the Commissioner is authorized to charge any additional fees, including extension fees or other relief that may be required, or credit any overpayment to Deposit Account No. 04-1420.

Respectfully submitted,

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